

1 KEKER & VAN NEST LLP
2 ROBERT A. VAN NEST - #84065
rvannest@kvn.com
3 CHRISTA M. ANDERSON - #184325
canderson@kvn.com
633 Battery Street
4 San Francisco, CA 94111-1809
Telephone: 415.391.5400
5 Facsimile: 415.397.7188

KING & SPALDING LLP
DONALD F. ZIMMER, JR. - #112279
fzimmer@kslaw.com
CHERYL A. SABNIS - #224323
csabnis@kslaw.com
101 Second St., Suite 2300
San Francisco, CA 94105
Telephone: 415.318.1200
Facsimile: 415.318.1300

6 KING & SPALDING LLP
7 SCOTT T. WEINGAERTNER (*Pro Hac Vice*)
sweingaertner@kslaw.com
8 ROBERT F. PERRY
rperry@kslaw.com
9 BRUCE W. BABER (*Pro Hac Vice*)
1185 Avenue of the Americas
New York, NY 10036
10 Telephone: 212.556.2100
Facsimile: 212.556.2222

GREENBERG TRAURIG, LLP
IAN C. BALLON - #141819
ballon@gtlaw.com
HEATHER MEEKER - #172148
meekerh@gtlaw.com
1900 University Avenue
East Palo Alto, CA 94303
Telephone: 650.328.8500
Facsimile: 650.328.8508

11 Attorneys for Defendant
12 GOOGLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

16 ORACLE AMERICA, INC.,
17
18 Plaintiff,
19 v.
20 GOOGLE INC.,
21 Defendant.

Case No. 3:10-cv-03561-WHA

**EXHIBIT K TO THE DECLARATION OF
DAVID ZIMMER IN SUPPORT OF
GOOGLE INC.'S OPPOSITION TO
ORACLE AMERICA, INC.'S MOTION
TO EXCLUDE PORTIONS OF THE
EXPERT REPORTS OF GREGORY K.
LEONARD AND ALAN J. COX (DKT.
NO. 581)**

Judge: Hon. William Alsup

23
24 **PUBLICLY FILED VERSION**

Exhibit K

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
 Plaintiff,)
 vs.) No. CV 10-03561 WHA
GOOGLE, INC.,)
 Defendant.)
_____)

Videotaped deposition of STEVEN M. SHUGAN, PH.D.,
taken at the law offices of Boies, Schiller &
Flexner LLP, 1999 Harrison Street, Suite 900,
Oakland, California, commencing at 9:40 a.m.,
on Monday, September 26, 2011, before
Leslie Rockwood, RPR, CSR No. 3462.

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1 Q. So the feature sets that you tested in the
2 conjoint analysis was to some extent constrained by the
3 subject matter of the case?

4 A. I wouldn't use the word "constrained." I
5 would use the word "focused" on the attributes involved 10:18:26
6 in the case.

7 Q. Do you recall who communicated to you
8 specific features that ought to be included in the
9 conjoint analysis?

10 A. Well, the -- your question is not really 10:18:45
11 clear in the sense that there are different features in
12 the analysis. Now, some of the features were
13 communicated to me through Analysis Group that they were
14 required features and need to be there. Other features I
15 decided should be there, and there were other features 10:19:09
16 that Cockburn decided needed to be there. And then in
17 the end, I put it all together and decided which ones to
18 actually include in the analysis.

19 So the -- there wasn't one source where all
20 of the features came from. 10:19:23

21 Q. Okay. That's helpful. Thank you.

22 So which features did Professor Cockburn
23 instruct you should be included in the conjoint analysis?

24 A. Okay. The features that -- at the time that
25 were communicated included multitasking, the application 10:19:43

1 startup time, and the features related to the operating
2 system that are in the conjoint analysis.

3 And then the brand and price features, I
4 decided those needed to be included. And then the voice
5 command features, that was came up with through a 10:20:04
6 discussion of -- with Analysis Group about what to
7 include in the analysis and what not to include in the
8 analysis.

9 And the final one that also came from
10 Cockburn was the applications, the availability of the 10:20:18
11 applications. And that's outlined in my report.

12 Q. Were there any features that were discussed
13 for inclusion in the conjoint analysis but rejected?

14 MR. NORTON: Objection to form.

15 Can you -- I just -- there are Rule 26 10:20:36
16 problems with some of your questions. And so can you
17 just focus on whether he's having conversations with
18 counsel, having conversations with Analysis Group, or
19 having conversations with Mr. Cockburn? Otherwise, I'll
20 have to give him instructions on all of your questions. 10:20:51

21 MR. PURCELL: Right.

22 Q. So just so you know, I'm referring to your
23 discussions with Dr. Cockburn and Analysis Group, not
24 your instruction -- or your discussions with Oracle's
25 counsel. 10:21:00

1 So given that limitation, were there other
2 features that were discussed for potential inclusion in
3 the conjoint analysis but rejected?

4 A. The -- there was a large number of features
5 that we discussed in general. I believe probably maybe 10:21:13
6 20 that were listed in the -- that came out of the focus
7 group. Now, some of those didn't seem very important,
8 and some of them were found to be important by looking at
9 the literature regarding the surveys and third-party data
10 available on smartphones. And so there were other 10:21:44
11 features.

12 Now, in the end, the decision was made by me
13 and Analysis Group as to what features would be included
14 based on all these considerations. Nothing was really
15 rejected in the sense that somebody along the way said 10:21:58
16 that this can't be included in there for some reason or
17 another.

18 In the end, I had to decide which ones to
19 include based on the ability of the conjoint analysis to
20 deal with the feature and the requirements of the case. 10:22:17

21 So there was a specific objective to the case
22 regarding supplying information to Cockburn, and that had
23 to be the primary determinant of how the study was
24 designed to give him the most accurate possible
25 information. 10:22:37

1 one-on-one interviews; correct?

2 A. Right.

3 Q. And then they proceeded to conduct the focus
4 group after that?

5 A. That's correct. 10:42:49

6 Q. And you didn't communicate with Analysis
7 Group in between the one-on-one interviews and the focus
8 group; correct?

9 A. Not to my knowledge.

10 Q. So Analysis Group made the decision what, if 10:42:55
11 any -- anything to take from the one-on-one interviews
12 that would then lead -- guide their behavior in the focus
13 group; is that right?

14 A. I'm not sure. What are you asking?

15 Q. That was a pretty bad question. Let me try 10:43:16
16 it again.

17 So Analysis Group made the decision regarding
18 how, if at all, to alter the design of the focus group
19 based on what they had learned from the one-on-one
20 interviews; correct? 10:43:32

21 MR. NORTON: Objection to form.

22 THE WITNESS: My understanding is that they
23 did the one-on-one interviews to get the attributes to be
24 used in the focus group. I don't know what decisions are
25 really been made there. I think that it's just a matter 10:43:42

1 of collecting information and using the information.

2 Now, there may have been decisions, but I
3 don't know of any decisions that were made at that point.

4 Q. BY MR. PURCELL: So Analysis Group used the
5 one-on-one interviews to gather a set of product features 10:43:56
6 that they then might use in the focus group?

7 A. Correct.

8 Q. And so when the focus group was conducted --
9 I think you mentioned this earlier -- Analysis Group
10 first asked open-ended questions about what product 10:44:09
11 features were important to the consumers; correct?

12 A. Correct.

13 Q. And then after that, they suggested potential
14 product features that might have been important and asked
15 the consumers whether those were important; correct? 10:44:19

16 A. Right. Standard unaided and aided recall
17 questions.

18 Q. Okay. So let's talk about the focus group.
19 We've mentioned that the focus group was conducted on
20 August 5th. How soon after the one-on-one interviews did 10:44:34
21 the focus group take place?

22 A. I assume they were very close together since
23 this whole thing was happening in one week and I had
24 talked to them earlier in the week before they had done
25 anything. 10:44:52

1 Q. Analysis Group conducted the focus group;
2 correct?

3 A. That's correct. Well, the person I had
4 mentioned conducted it.

5 Q. Rene Befurt? 10:44:59

6 A. Right.

7 Q. Where physically was the focus group
8 conducted?

9 A. Well, you asked that. But my understanding
10 was generally that it was at Analysis Group which it was 10:45:06
11 done, but maybe that's not accurate. But that was my
12 understanding at the time.

13 Q. It was at Analysis Group where?

14 A. In Boston.

15 Q. In Boston. Okay. You weren't present at the 10:45:15
16 focus group?

17 A. I was not present.

18 Q. Was there any written material prepared, like
19 a discussion guide, to guide the focus group?

20 MR. NORTON: Objection. Asked and answered. 10:45:26

21 THE WITNESS: I don't believe so. I would
22 have to check with Analysis Group, though. I -- things
23 were happening rapidly, and most of our discussions were
24 on the phone, and we were doing this for the conjoint
25 analysis. And so we quickly sort of moved to the 10:45:38

1 conjoint analysis from the focus group.

2 The focus really wasn't on the focus group.

3 The goal was to quickly get the attributes set so that we

4 could move to the conjoint analysis. And to some extent,

5 the focus group was somewhat superfluous in the sense 10:45:55

6 that we sort of had an idea of what the attributes were

7 from the literature already, but we wanted to cover all

8 the bases and make sure we'd actually talked to consumers

9 and the -- no new attributes sort of emerged that we

10 would have to think about that was related to the 10:46:14

11 requirements of the study.

12 Q. BY MR. PURCELL: After the focus group was
13 conducted, do you know if Analysis Group memorialized the
14 results of the focus group in any type of written form?

15 A. My -- as I said, my understanding is they did 10:46:27
16 not, but I don't know that for a fact. They may have
17 internally produced a document they didn't give to me
18 that sort of summarized the findings and the -- what
19 their conclusions was.

20 Now, if there was written documentation 10:46:44
21 associated with the focus group, I don't know whether
22 that was actually in a report form or it was just in a
23 notes form.

24 Q. You mentioned that the purpose of the focus
25 group, or at least one of the purposes of the focus 10:46:56

1 group, was to gather data on which product attributes
2 were important to consumers with respect to smartphones;
3 correct?

4 A. Yes.

5 Q. Do you know whether Analysis Group kept any 10:47:12
6 record of which of the various product attributes they
7 considered were deemed most important by the participants
8 in the focus group?

9 MR. NORTON: Objection to form.

10 THE WITNESS: I don't think that they ever 10:47:31
11 came up with that type of an analysis where they were
12 actually identifying which of the attributes seemed to be
13 more prominent on some criteria.

14 I believe they did send me a correspondence
15 that had a list of attributes in it at one point, now 10:47:50
16 that I think about it. And so I may have a memo that
17 they sent me at one time that summarized -- or some of
18 the material we talked about in a telephone interview. I
19 didn't use the memo directly, but I may have something if
20 I look for it that did list attributes. 10:48:07

21 But there wasn't any type of analysis of the
22 attributes or ranking of the attributes. It was just a
23 raw form of this is sort of some of the stuff we found in
24 the focus group. It wasn't a report, anyway.

25 Q. BY MR. PURCELL: Wouldn't it have been 10:48:22

1 observe.

2 And so you can predict both hypothetical
3 markets or counterfactual markets that don't exist and
4 what the shares would be, and you can predict existing
5 markets and what the shares would be, and you want to 13:20:24
6 make sure that the shares that you predict for existing
7 markets are pretty close to what we actually observe in
8 the market.

9 Q. Let's talk for a second about sort of the
10 conversion process of converting preference shares into 13:20:37
11 market shares. How did you go about doing that in
12 conducting this analysis?

13 A. Okay. What you would do in this particular
14 analysis is you would take the preference shares and you
15 would look at the shares and try to figure out whether or 13:20:53
16 not the market share would be higher for a particular
17 product than what the preference share would be.

18 And so in this particular analysis all that
19 was important was the number that I was giving to
20 Professor Cockburn was a conservative number. So I would 13:21:10
21 look at all the different factors that make the market
22 share different from the preference share and make sure
23 each factor is working in a direction that would cause
24 that number to be conservative or would not have much
25 effect on the -- on the difference. 13:21:26

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1 Now, I don't think that difference is large,
2 because as I said, we could predict pretty accurately
3 within 4 percent what the actual shares in the
4 marketplace would be, but still it's useful to sort of
5 consider all those factors. So that's how you would do 13:21:43
6 it.

7 Q. And what factors did you consider in this
8 case?

9 A. Well, I considered all the typical marketing
10 mix variables, so that would be things such as 13:21:50
11 distribution, adoption by OEMs, adoption by carriers, the
12 availability of the product, word of mouth on the
13 product, reviews of the product, the effectiveness of
14 advertising on the product and so on.

15 Q. And where is your calculation of those 13:22:10
16 factors shown?

17 A. I didn't do a quantitative calculation on
18 that. I did a qualitative calculation.

19 Q. So you just considered those factors and
20 concluded that each of them supports your conclusion? 13:22:20

21 A. Each of those factors works in the direction
22 that causes my conclusion to be conservative.

23 Q. In terms of -- leaving aside those other
24 factors that you find confirmed your analysis, just in
25 terms of the sort of mathematical process, how did you 13:22:42

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF MARIN)
3

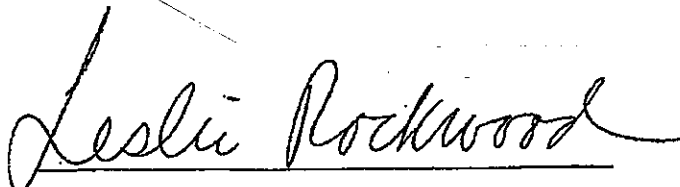
4 I, LESLIE ROCKWOOD, CSR No. 3462, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set forth
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all
10 objections made by counsel at the time of the examination
11 were recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision, and that
13 the foregoing pages contain a full, true and accurate
14 record of all proceedings and testimony to the best of my
15 skill and ability.

16 I further certify that I am neither counsel
17 for any party to said action, nor am I related to any
18 party to said action, nor am I in any way interested in
19 the outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name
21 this 27th day of September, 2011.

22
23 
24

25 LESLIE ROCKWOOD, CSR. NO. 3462